

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

STEVEN CHRISTENSON,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

) Case No. DISM-99-0037

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held at the South Campus Center at the University of Washington, in Seattle, Washington, on October 24, 2000.

1.2 **Appearances.** Appellant Steven Christenson was present and was represented by Tom Whisenant, Union Representative for the Seattle Building & Construction Trades Council. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct, and abuse of a coworker. Respondent alleges that Appellant vandalized University property and falsely accused fellow employees of the vandalism.

1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social and Health Services, PAB No. D86-119 (1987); Johnson v. Lower Columbia College, PAB No. D93-077 (1994); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Steven Christenson was a Painter and permanent employee for Respondent University of Washington (UW). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on July 29, 1999.

2.2 Appellant began his employment as a permanent seasonal employee with the University of Washington Paint Shop in August 1996. Appellant had no prior formal or informal disciplinary action.

2.3 In the Summer of 1998, paint shop van #38 had been scratched along the passenger and driver's sides and along the back of the van; however, management at the UW Paint Shop did not determine who was responsible for the vandalism at that time.

2.4 Don Johnson, Maintenance Supervisor, supervised employees of the Paint Shop. On December 2, 1998, he held a shop meeting with staff during which he discussed problems with damage and vandalism to shop vans.

1 2.5 Appellant was present at the meeting and the following day he approached Mr. Johnson to
2 report an instance of vandalism he had witnessed in late July or early August 1998. During their
3 discussion, Appellant alleged that Temporary Painters Rod Hall and Stanley Withers scratched van
4 #38. Appellant also told Mr. Johnson that two or three other people had observed the incident, but
5 he would not name them. Mr. Johnson asked Appellant to have these individuals come forward and
6 discuss the incident with him. In the ensuing weeks, Mr. Johnson conducted an investigation and
7 interviewed numerous individuals. However, no one ever came forward who could corroborate
8 Appellant's story.

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11 2.6 The Board has been presented with two versions of the events related to the vandalism of
12 van #38. In making a determination of the facts, we must resolve whether the version presented by
13 Appellant or the version given by his coworker, Mr. Hall, is more credible. There are no other
14 witnesses to the vandalism who can corroborate either of their stories. However, in reviewing the
15 evidence before us, we find numerous discrepancies in Appellant's testimony, the exhibits
16 submitted and statements he previously gave related to this case. Furthermore, Appellant was
17 unable to establish any corroboration for his version of the events, and the only witness who came
18 forward on his behalf, Painter Richard Funseth, could not testify that he saw Mr. Hall commit the
19 vandalism. As a result, we do not find Appellant credible or his version of the events believable.
20 On the other hand, Mr. Hall's testimony has been consistent throughout the preceding investigation
21 and before us, his demeanor and testimony have been forthright, candid and credible, and we find
22 no reason to disbelieve him. Furthermore, there is no compelling reason for Mr. Hall to fabricate
23 the events. Based on the credible evidence and testimony presented, the Board finds that the
24 following occurred.

1 2.7 Sometime prior to 7 a.m. in the Summer of 1998, Mr. Hall arrived at work and was heading
2 toward the loading dock located in front of the Paint Shop. As he approached the loading dock
3 where numerous work vans were parked, he observed Appellant walking down the driver's side of a
4 van with something in his hand. Appellant was walking from the front to the back of the van.
5 Although Mr. Hall could not see what Appellant had in his hand, he heard a dull scraping noise as
6 Appellant dragged his hand along side of the van. He and Appellant made eye contact but did not
7 exchange words. As Mr. Hall passed the van and walked toward the shop, he observed Mr. Funseth
8 on the passenger side of the van, with his shoulder leaning up against the van looking toward the
9 loading dock. Mr. Funseth turned around and greeted Mr. Hall.
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12 2.8 After Mr. Hall changed into his work clothes, he boarded a van which transported him to his
13 assigned job site for the day. Also in the van were Painters Doug Loisel and Kevin Roth. Both Mr.
14 Loisel and Mr. Roth credibly testified that Mr. Hall posed a hypothetical question to them asking
15 what an individual who witnessed vandalism of state property should do. Mr. Loisel responded to
16 Mr. Hall that he should immediately report the vandalism. Mr. Hall did not immediately disclose
17 his observations because he feared that Appellant would retaliate by accusing him of the vandalism.
18 Mr. Hall was a temporary employee at that time, and he feared that he would lose his job if any
19 doubt was cast upon him, his trustworthiness or integrity.
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22 2.9 After learning that he had been accused of vandalizing the van, Mr. Hall was assigned to
23 paint in the University Police Station. While there, he approached a University Police Officer and
24 asked if he could submit to a lie detector test. When questioned why he wanted to take a lie
25 detector test, Mr. Hall described what he had witnessed. The police detective encouraged Mr. Hall
26 encouraged to file a police report regarding the incident.

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2 2.10 On December 28, 1998, Mr. Hall filed a report with the University Police Department
3 alleging Appellant had keyed a University van. After conducting their own investigation, the
4 University Police forwarded their findings and conclusion that Appellant had vandalized state
5 property to the King County Prosecutor's office. However, the prosecuting attorney declined to file
6 charges against Appellant.
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8 2.11 Rick Cheney, Director of Physical Plant, reviewed the results of the investigation into
9 Appellant's allegations against Mr. Hall and Mr. Withers and Mr. Hall's counter allegation that
10 Appellant scratched the van. After reviewing the numerous witness statements gathered during the
11 investigation, including a UW Police report, Mr. Cheney concluded that Appellant's allegations
12 against Mr. Hall could not be corroborated. Mr. Cheney did not find Appellant credible because he
13 initially refused to name individuals who could support his version of the events, and the
14 individuals he did subsequently name had no knowledge of the events. Mr. Cheney did not believe
15 that Mr. Funseth's recollections corroborated Appellant's story. Mr. Cheney also observed that
16 Appellant's statements throughout the investigation were not consistent. Mr. Cheney also weighed
17 information that van #38 was driven by a Painter Lead who had previous difficulties working with
18 Appellant.
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23 2.12 When reviewing Mr. Hall's allegation against Appellant, Mr. Cheney observed that Mr. Hall
24 remained consistent in his recollection of the events and that several employees recalled the
25 hypothetical question he had posed. Mr. Cheney believed that these witnesses supported Mr. Hall's
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1 story. Mr. Cheney ultimately concluded that Appellant was responsible for scratching van #38, that
2 he made false statements during the investigation and falsely accused two coworkers of the
3 vandalism. By memo dated May 7, 1999, to Jeraldine McCray, Appellant's appointing authority,
4 Mr. Cheney recommended Appellant's dismissal.

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6 2.13 By letter dated June 16, 1999, Jeraldine McCray, Assistant Vice President for Facilities
7 Services, informed Appellant of his dismissal effective July 1, 1999. Ms. McCray charged
8 Appellant with neglect of duty, gross misconduct, abuse of a coworker, vandalizing University,
9 property and falsely accusing other employees of vandalizing University property.
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12 2.14 Mr. Hall became a permanent employee in November 1999.
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14 **III. ARGUMENTS OF THE PARTIES**

15 3.1 Respondent argues that Appellant has not been consistent and that his testimony and version
16 of the events should not be believed. Respondent argues that Appellant was motivated to come
17 forward with his allegations after rumors that he had scratched the van began to surface.
18 Respondent contends that in order to preserve his employment, Appellant falsely accused a
19 coworker of the vandalism. Respondent argues that the events described by Appellant are not
20 believable while Mr. Hall's account of the incident has been consistent and therefore should be
21 believed. Respondent asserts that Appellant's contention that Mr. Hall was motivated to lie by his
22 desire to become a permanent employee is unfounded and Mr. Hall's appointment as a permanent
23 employee occurred months later and was unrelated to Appellant's termination. Respondent
24 contends that a preponderance of the credible testimony established that Appellant vandalized the
25 van and that dismissal is the appropriate sanction.
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2 3.2 Appellant argues that the facts of this case are two years old and any discrepancies in his
3 testimony are minor. Appellant asserts that he was unable to locate witnesses to corroborate his
4 story because other employees were unwilling to get involved. Appellant argues that Mr. Hall's
5 motive for leveling the charges against him were his desire to become a permanent employee and
6 that Mr. Hall had everything to lose if he was found guilty of the allegations. Appellant contends
7 that Mr. Hall could not have seen him scratching the van at 6:45 a.m. because Mr. Hall seldom
8 arrived to work before starting time and that no one can verify that he ever arrived early. Appellant
9 argues that Respondent has not met its burden of proving that he scratched the van and then
10 wrongfully accused his coworker of the vandalism. Appellant asks that his termination be reversed
11 and that he be reinstated to his former position.

12 13 IV. CONCLUSIONS OF LAW

14 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
15 herein.

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17 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
18 the charges upon which the action was initiated by proving by a preponderance of the credible
19 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
20 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-
21 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

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24 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
25 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
26 of Social & Health Services, PAB No. D86-119 (1987).

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2 4.4 Abuse of fellow employees is established when it is shown that the employee wrongfully or
3 unreasonably treats another by word or deed. Johnson v. Lower Columbia College, PAB No. D93-
4 077 (1994).

5 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
6 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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8 4.6 Respondent has met its burden of proving by a preponderance of the credible evidence that
9 in August 1998, Appellant vandalized state property and later falsely accused a fellow employee.
10 Respondent has shown by a preponderance of the credible evidence that Appellant's misconduct
11 constituted neglect of duty, abuse of a coworker and rises to the level of gross misconduct.
12 Although Appellant alleges that Mr. Hall was motivated to falsely accuse him of the vandalism
13 because of his desire to become a permanent employee, nothing in the record establishes that Mr.
14 Hall was placed into Appellant's position or that Mr. Hall reasonably believed that he would be
15 placed in the next available permanent position created by Appellant's termination.

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17 4.7 In determining whether a sanction imposed is appropriate, consideration must be given to
18 the facts and circumstances, including the seriousness and circumstances of the offenses. The
19 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
20 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
21 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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23 4.8 In considering the level of discipline, we conclude that termination is reasonable based upon
24 the seriousness of Appellant's misconduct. Therefore, the appeal should be denied.

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26 **V. ORDER**

1 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Steven Christensen is denied.

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3 DATED this _____ day of _____, 2000.

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5 WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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Leana D. Lamb, Member

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